ARLAND E. AND ELDORA R. PURINGTON

IBLA 72-430 Decided March 9, 1973

Appeal from decision (R-993) of District and Land Office, Riverside, California, rejecting application (R-993) for fee title transfer of a 5-acre tract under the Mining Claims Occupancy Act, and offering a lifetime lease to approximately 1.1-acre area of the land sought.

Affirmed.

Mining Occupancy Act: Generally -- Mining Occupancy Act: Acreage to be Conveyed

> The determination of the extent of the relief that will be granted to a qualified applicant under the Act of October 23, 1962, is committed to the discretion of the Secretary of the Interior, and where the determination to award an applicant a lifetime lease for a portion of the land applied for rests upon rational bases, it will not be disturbed.

Federal Employees and Officers: Authority to Bind Government

> An applicant can gain no right to public land because he may have been informed, prior to the relinquishment of a mining claim, that upon abandonment of his claim he would be permitted to purchase a portion of the land embraced in the claim.

APPEARANCES: Eldora R. Purington, pro se.

OPINION BY MR. FISHMAN

Eldora R. Purington has appealed from a decision, dated April 28, 1972, rendered by the District and Land Office at Riverside, California, which rejected her and her husband's 1/ application to purchase a fee title to a tract of nearly five acres under the Mining Claims Occupancy

1/ The applicant, Arland E. Purington, is now deceased.

Act, as amended , 30 U.S.C. §§ 701-709 (1970), and which decision instead offered applicants a lifetime lease to an approximately 1.1-acre area of the land sought.

On May 3, 1946, the Puringtons located the De Soto placer mining claim, consisting of 20 acres. 2/ Between then and October 20, 1967, they placed various improvements on the claim. The major improvements are a one bedroom house with a screen porch, a combination cabin and shop, a combination garage and carport, a boxcar (spare bedroom), a tank-well, a toilet, a fence, and a mine shaft - 100 to 110 feet deep.

On October 20, 1967, the Puringtons filed a relinquishment of the mining claim, 3/ and on the same date they filed the application to purchase a fee title to nearly five acres of the mining claim land. 4/ The five acres they sought contained all of the major improvements. The major improvements are also all contained within the 1.1 acres for which the District and Land Office, by its decision, offered the Puringtons a lifetime lease.

On this appeal, the appellant does not argue that the 1.1 acres is an inadequate area in size or location on which to maintain her home, or that any of the improvements the Puringtons made are outside the 1.1 acres. She does state:

> We gave up a legitimate 5/ mining claim on Bureau of Land Management assurances we would receive a deed to the five (5) acres if we qualified. We qualified.

We cannot, of course, verify or controvert the truthfulness of appellant's allegation that the Puringtons were told they would be allowed to purchase all the land for which they have applied. If such a representation was made prior to their relinquishment of the

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2/ The claim was located in secs. 4 and 5, T. 28 S., R. 40 E., M.D.M., California.
3/ The relinquishment was accepted by decision of November 15, 1967.
4/ The land applied for lies within the NE 1/4 of sec. 5, T. 28 S., R. 40 E., M.D.M., California.
5/ To the contrary, however, the record contains a report dated May 4, 1971, prepared by F. Hunter Weiler, a Realty Assistant in the Bureau of Land Management. The report states inter alia, that there is "no active mining in the area, and no evidence of valuable minerals on the [De Soto placer mining claim]."

claim, it was both premature and unauthorized. In any event, it is axiomatic that an applicant can gain no right to public land by reliance upon erroneous or unauthorized advice from a land office employee. Fred and Mildred M. Bohen, 63 I.D. 65 (1965); Herman J. Schilmoeller, A-29745 (November 5, 1963).

The appellant's other argument is as follows:

> Two of my neighbors, who also applied at approximately the same time, qualified and were given their deeds. Why should there be discrimination in my case? Could it be because my husband is now deceased and I am a widow?

Appellant offers no evidence to show any abuse of discretion or discrimination in the decision below, nor are we able to find any; on the contrary, the decision below is fully supported by the record, including the land report referred to in footnote 5, supra. The report was made in response to the Puringtons' application, and the report relates to the area formerly covered by the De Soto placer mining claim. The report states, inter alia, the following facts:

> The subject land is not isolated, being part of a large block of Public Domain classified for Multiple Use Management on November 20, 1968 (R 1327).
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> The large block of Public Domain, of which the subject land is a part, has been classified for Multiple Use Management, with open space and recreation recognized as the primary values.
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> The site of Bakersfield Desert College is about 2 miles from the subject * * *. An important consideration in locating the college was the surrounding block of unspoiled desert available for study and enjoyment. A great deal of interest has been expressed in keeping this block undeveloped and in Federal ownership * * *. As a result, privately owned lands have been zoned, with a 2 1/2 acre minimum stipulation, to prevent subdivisions, trailer parks, etc. Public lands have been recognized in the Kern County Planning Commission as primarily valuable for outdoor recreation and open space.

Highway 395, a major north-south California route, passes by the subject tract. It is being converted into a freeway.

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The undeveloped desert lands in the area are being extensively used for outdoor recreation activities, such as motorcycling, hunting, rockhounding, photography. These uses will sharply increase by people from all over Southern and Central California, as general population increases.

There is adequate privately-owned land suitable for residence in the immediate Ridgecrest area to sustain all projected population increase.

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From the map, it can be seen that there are a few small, scattered tracts of patented land in the Public Domain block south of Ridgecrest. Sections 16 and 36 were state school lands. Most of the other tracts were mining claims that went to patent when the area was an active mining district, except for tracts #1 and #2, which were patented under the Mining Claim Occupancy Act in 1966, before new values were recognized in the desert which resulted in management programs that are incompatible with patented inholdings. The BLM small tract program to the north of the block in the late 1950's was a disaster. [Emphasis added.]

It clearly demonstrated the problems associated with disposing of land for residency purposes without proper planning coordination with local government, zoning, and utility availability.

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The general area is now used extensively for outdoor recreation and open space enjoyment. This use will greatly increase in the future.

The subject tract itself is being utilized for occupancy. It is one of several such occupancies strung out along this particular stretch of highway. These occupancies are not one of the higher capabilities of the land, as

they are isolated inholdings in a large block of land used for other purposes.

The report sets forth certain conclusions. These conclusions are fully supported by the facts stated in the report. The conclusions are as follows:

A. The proper use of the subject tract is management as a part of the surrounding public domain for open space and outdoor recreation.

B. Residential occupancy is an inholding incompatible with these management objectives, as it is highly visible from the highway and destroys the vast panoramas of unspoiled desert. It defers many from using the surrounding land for recreation over an area much greater than that occupied by the buildings themselves and creates management and law enforcement problems. It is incompatible with the Bakersfield Desert College site and with Kern County Plans. It encourages others to seek homesites on the Public Domain [sic], as is already evidenced by the number of such occupancies all strung out along this particular stretch of highway.

C. The applicant's residence and improvements will have to be recognized. Patent would forever perpetuate an inholding incompatible with management programs and would encourage other occupancies by persons seeking a home in the desert. Therefore, a lease is the proper form of tenure.

D. A lease rather than patent would cause no hardship whatsoever, to the applicants, as they already own a habitable home in Ontario which they are renting to someone else. They also own property about 12 miles from the subject, in the town of Randsburg. This property could also be used for a permanent home for the applicants.

The report recommends that the Puringtons be offered a lifetime lease to an approximately 1.1-acre area of the land applied for. This recommendation was followed in the decision below. It follows that the decision below is supported by rational bases, since the field report shows that it is not in the public interest to sell the land applied for, or to lease any of such land which is not essential to the Puringtons' homesite. Moreover 30 U.S.C. § 701

(1970) envisages a transfer to an applicant under the Act of "* * * the acreage actually occupied by him * * *." The 1.1-acre area meets that standard.

The decision below is in keeping with the legislative history of the Act. In explaining the Act, the Senate Committee on Interior and Insular Affairs stated:

> Section 1 gives to the Secretary of the Interior discretionary authority to convey to an occupant of an unpatented mining claim not more than either 5 acres of land or the acreage actually occupied, whichever is less. * * *
>
> The term 'may convey' is fully intended to establish the discretionary nature of the authority conveyed to the Secretary. * * *
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> Where land is now needed or known to be needed for public uses or purposes * * * [the Secretary] is under no directive to grant the use of land. In addition, he will be expected to exercise sound discretion in setting standards as to the circumstances under which a fee simple patent, life estate, lease or term permit would be appropriate to the facts and consistent with the public interest.

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> * * * The legislation does not intend that applicants shall displace public use of public land, or that land should be patented in fee in areas where such action would produce results at odds with public land programs. For these situations, where equities exist or hardship would result, the qualified applicants can generally be granted life estates for the remainder of their lives or permission to occupy the land for appropriate periods. [S. Rep. No. 1984, 87th Cong., 2d Sess. 5, 7 (1962).]

It should also be noted that the Bureau, by its decision to offer the Puringtons a lifetime lease to the 1.1 acres, has assured them of the right to remain undisturbed in the possession of their homesite for as long a period as they are able to make use of it. In so doing, it has fulfilled the declared objective of the Act which is "to permit persons who live on mining claims for residential purposes * * * to continue to reside in their home." S. Rep. No. 1984, supra at 3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Frederick Fishman, Member

We concur:

Martin Ritvo, Member

Douglas E. Henriques, Member.